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 EDRA BLIXSETH

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DENNIS MONTGOMERY and the
 MONTGOMERY FAMILY TRUST,

Plaintiffs,

vs.

ETREPPID TECHNOLOGIES, LLC, WARREN
 TREPP, and the UNITED STATES
 DEPARTMENT OF DEFENSE,

Defendants.

AND RELATED CASES.

) Case No. 3:06-CV-00056-PMP-VPC
) BASE FILE

) (Consolidated with Case No. 3:06-CV-
) 00145-PMP-VPC)

) **THE MONTGOMERY PARTIES'**
) **MOTION FOR AN ORDER**
) **SHORTENING TIME FOR HEARING**
) **OF MOTION FOR STAY OF MAY 29,**
) **2008 ORDER OF MAGISTRATE JUDGE**
) **PENDING RESOLUTION OF**
) **OBJECTIONS TO SAID ORDER;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
) **THEREOF; DECLARATION OF**
) **DEBORAH KLAR**

NOTICE OF MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Dennis Montgomery ("Montgomery") and The Montgomery Family Trust (collectively, the "Montgomery Parties") will and hereby do move the United States District Court Judge for an Order shortening time for the hearing or other resolution of the Montgomery Parties' concurrently filed Motion for Order Staying the "Order Regarding Source Code Discovery" issued by electronic service on May 29, 2008 (Docket # 645) (the "May 29 Order") pending a ruling on the Montgomery Parties' "Objections to Magistrate Judge's Order re Source Code Discovery filed June 12, 2008 (Docket # 672) (the "Objections). This motion for a hearing on shortened time will be heard on a schedule as directed by the Court.

Both motions are made on the grounds that the Court has the inherent equitable power to issue a stay of the Order and that absent a stay, the Montgomery Parties will be required to comply with the Order as early as June 30. Such compliance with the Order -- which is contrary to the Federal Rules of Civil Procedure and controlling Ninth Circuit authority as set out in the Objections -- would irreparably harm the Montgomery parties both by prejudicing them in the litigation and by imposing enormous financial costs on them. In short, the Objections will be mooted absent a stay and a brief stay pending resolution of the Objections is therefore warranted to preserve in practice the District Judge's statutory authority and obligation to review a challenged Order of the Magistrate Judge.

This motion for shortened time is further based on the ground that if the motion requesting a stay pending resolution of the Objections is heard on normal time it will not be heard until after the June 30 date for compliance with the May 29 Order and therefore the motion for a stay would itself therefore be moot.

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1 This Motion is based on this Notice of Motion and Motion, the attached memorandum of
2 Points and Authorities, the attached declaration of Deborah Klar, Esq., the pleadings and
3 proceeding transcripts of record as indicated, and all such matters as may be considered or
4 judicially noticed in connection with the Motion and any argument the Court may hear on the
5 Motion.

6 Dated: June 20, 2008

Respectfully submitted,

7 LINER YANKELEVITZ
8 SUNSHINE & REGENSTREIF LLP

9 By: _____/S/

10 Deborah A. Klar
11 Tuneen E. Chisolm
12 Attorneys for Plaintiffs
13 DENNIS MONTGOMERY, the
14 MONTGOMERY FAMILY TRUST,
15 OPSRING LLC and EDRA BLIXSETH
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MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

As set forth in more detail in the concurrently filed motion requesting a stay of its enforcement (the "Stay Motion"), the May 29 Order directed the Montgomery Parties to produce enormous amounts of extremely sensitive trade secret information in contravention of controlling Ninth Circuit authority and to begin that process prior to June 30. The Montgomery Parties timely filed the Objections in response, and in the Stay Motion request that the Court stay the May 29 Order pending consideration and resolution of the Objections. Because the Stay Motion would not normally be heard prior to the time compliance with the Order would be required, the Montgomery Parties bring this motion requesting that the Stay Motion be heard on shortened time, at the Court's earliest convenience.

The filing of the Stay Motion and this motion are necessitated at this time because notwithstanding the filing of the Objections, the Magistrate Judge during the June 17 status conference indicated that compliance with the June 30 deadline would be required absent a ruling by the District Judge on the Objections prior to that time. *See* Declaration of Deborah Klar (attached hereto) ("Klar Decl.") ¶ 2.

The Montgomery Parties bring this motion and the Stay Motion because:

(1) Compliance with the May 29 Order would irreparably harm the Montgomery parties both by prejudicing them in the litigation and by imposing enormous financial costs on them, *see* Declaration of Dennis Montgomery (Docket # 467 at pages 25-30) ¶¶ 20, 22 (requests implicate literally *millions* of computer files);

(2) The Montgomery Parties timely filed the Objections on June 12, and have a good faith belief that the Objections are meritorious, *see* Klar Decl. ¶ 3;

(3) The Montgomery Parties do not anticipate a ruling from the District Judge on the merits of the Objections until after the current compliance date, *see* Klar Decl. ¶ 4; and

(4) The Montgomery Parties have a good faith belief that the Stay Motion is meritorious and presents authority justifying the granting of a stay, *see* Klar Decl. ¶ 5.

1 **II. CONCLUSION**

2 For all the preceding reasons, the Montgomery Parties respectfully request that the Court
3 grant this motion to consider the Stay Motion on shortened time, at the Court's earliest
4 convenience.

5
6 Dated: June 20, 2008

Respectfully submitted,

7 LINER YANKELEVITZ
8 SUNSHINE & REGENSTREIF LLP

9 By: _____/S/
10 Deborah A. Klar
11 Tuneen E. Chisolm
12 Attorneys for Plaintiffs
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14 MONTGOMERY FAMILY TRUST, OPSRING
15 LLC, and EDRA BLIXSETH
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DECLARATION OF DEBORAH KLAR

I, Deborah Klar, declare and state as follows:

1. I am an attorney at law duly licensed to practice before this Court. I am a partner of the law firm of Liner Yankelevitz Sunshine & Regenstreif LLP, counsel of record for Dennis Montgomery, Brenda Montgomery and the Montgomery Family Trust ("the Montgomery Parties") in the above-captioned action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. During the June 17 status conference, the Magistrate Judge indicated that compliance with the June 30 deadline would be required absent a ruling by the District Judge on the Montgomery Parties' "Objections to Magistrate Judge's Order re Source Code Discovery" (Docket (# 672) (the "Objections")) prior to that time.

3. The Montgomery Parties on June 12 timely filed the Objections and have a good faith belief that they are meritorious.

4. No date has been established for a hearing or ruling on the Objections, and the Montgomery Parties reasonably believe that it may not occur prior to June 30.

5. The Montgomery Parties have a good faith belief that the Stay Motion is meritorious and presents authority justifying the granting of a stay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 20th day of June 2008, at Los Angeles, California.

/S/

Deborah A. Klar

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Law Offices Of Liner Yankelevitz Sunshine & Regenstreif LLP, and that on June 20, 2008, I caused to be served the within document described as **THE MONTGOMERY PARTIES' MOTION FOR STAY OF MAY 29, 2008 ORDER OF MAGISTRATE JUDGE PENDING RESOLUTION OF OBJECTIONS TO SAID ORDER; MEMORANDUM OF PAOINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF DEBORAH KLAR** on the interested parties in this action as stated below:

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☒ **[ELECTRONIC]** By filing the document(s) electronically with the U.S. District Court and therefore the court's computer system has electronically delivered a copy of the foregoing document(s) to the persons listed above at their respective email address.

1 I declare under penalty of perjury under the laws of the State of California and
2 the United States of America that the foregoing is true and correct.

3 Executed on June 20, 2008, at Los Angeles, California.

4 Sklar K. Toy

(Type or print name)



(Signature)